

OPEN RECORDS AND MEETINGS OPINION
2005-O-09

DATE ISSUED: May 27, 2005

ISSUED TO: Twin Buttes Public School District 37

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Ms. Lauren Donovan asking whether Twin Buttes Public School District 37 violated N.D.C.C. § 44-04-18 by failing to provide requested records within a reasonable period of time.

FACTS PRESENTED

On or about March 1, 2005, Ms. Donovan requested records of the school board's travel expenditures from July 2004 to the present day from the school's business manager, Ms. Lorenz. The business manager assured Ms. Donovan that the requested information would be provided. When Ms. Donovan did not receive the information, she called the school again on or about April 11, 2005, and repeated her request for the records. The school board president, Ms. Starr, told Ms. Donovan that her request needed to be in writing and that she would need to pay the reasonable copying and mailing fee before the school board would release the records. Ms. Lorenz offered to send a bill to Ms. Donovan, but would only do so after she received the written request for the records. The school board refused to provide the records to Ms. Donovan because she refused to make her request for records in writing and pay the copy charges prior to receiving the records.

ISSUE

Whether the school district violated N.D.C.C. § 44-04-18 by requiring Ms. Donovan to put her request in writing and by not providing her a copy of the District's travel expenditures from July 2004 to the present within a reasonable time.

ANALYSIS

Upon request for a copy of specific public records, an entity shall furnish the requester one copy of the public records requested. N.D.C.C. § 44-04-18(2). "A request need not be made in person or in writing." *Id.* (emphasis added); N.D.A.G. 2001-O-12. An entity

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may require payment before making or mailing the copy, or both. Id. It is a violation of N.D.C.C. § 44-04-18 when a copy of a record is not provided within a reasonable time. See N.D.C.C. § 44-04-18(7). Although N.D.C.C. § 44-04-18 does not usually require an immediate response, the delay permitted will usually be measured in a few hours or a few days rather than several days or weeks. N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06. "Under most circumstances, a delay of a month in providing copies of requested records would be unreasonable." N.D.A.G. 2001-O-12.

Approximately two and one half months have elapsed since Ms. Donovan made her request. The school board has offered no explanation that would justify the delay other than to assert that Ms. Donovan failed to put her request in writing and to pay for the records upfront. It is a clear violation of N.D.C.C. § 44-04-18 to require that a request for open public records be made in writing. N.D.A.G. 2001-O-12; N.D.C.C. § 44-04-18(2). Although it is legal to request payment prior to providing the records, the school board refused to provide the bill, or estimate of the costs, until it first received the request for records in writing.¹ With no valid legal justification for refusing to provide the records requested by Ms. Donovan, it is my opinion that the school board violated the open records law by not providing public records within a reasonable time.

CONCLUSION

The Twin Buttes School District violated N.D.C.C. § 44-04-18 by requiring Ms. Donovan to put her request in writing, which ultimately resulted in the District's further violation of that section because it did not provide Ms. Donovan with the requested records within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

The school district must give Ms. Donovan the information she requested regarding the school board's travel expenditures, without charge.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.1. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

¹ Ms. Donovan did not ask this office whether the charge of \$1.00 per page was a "reasonable fee" as provided in N.D.C.C. § 44-04-18(2). Public entities should be aware that as of April 18, 2005, N.D.C.C. § 44-04-18(2) was amended. Current law now provides that a public entity may charge up to 25 cents per impression for copies made on 8 ½ inch x 11 inch and 8 ½ inch X 14 inch paper. See N.D.C.C. § 44-04-18(2)

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